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File No. O. Lunacy/57
Legal Department

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Subject:— Opinions under the Indian Lunacy Act 1912

P. 7
(12)

File No. O. Lunacy/57

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C O N T E N T S

Legal Department File No. O. Lunacy/51

Sr..No.	R. I. / O. No.	Subject	Pages.
		Opinions under the Indian Lunacy Act, 1912.	
1.	3555 27-12-1951	Section 75(1) Dissolution of the I.C.S. Family Pension Fund who should exercise the claim of the Subscriber is a lunatic	1-2
2.	~~12756~~ 12756 8-8-1951	Electricity Convulsive Treatment Insulin Therapy and Brain operation whether amendment of this Act is necessary as it involves a risk of life	3-6
3.	13701 27-8-51	Section 11: rule 18(v) of the rules made under Recovery of maintainance charges of a lunatic	7-10

Mjr/22/6
5 Cs.

K.J.R.
23/6

Legal Department.

It appears that on the petition of Prabhakar Janan Joshi, eldest son of Shri G.K.Joshi, under the Indian Lunancy Act, 1912, the Assistant Judge, Poona, had appointed him as manager of the estate of Shri G.K.Joshi (who was held to be a linatic) mentioned in the investory paragraphs 4(a),(b),(d) and (e) of the petition. Under section 75(1) of the Act, every manager of the estate of a lunatic appointed by the District Court may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic. In the nature of things, any claim in regard to the I.C.S. Family Pension Fund could not have been mentioned in the inventory of property for which the eldest son was appointed as manager by the Court. In the circumstances, it would be necessary for the eldest son of Shri G.K. Joshi to apply to the District Court either for being appointed as manager also in regard to the claim against the I.C.S. Family Pension Fund enabling him to exercise the option offered, or in the alternative, seeking merely the directions of the Court for the purpose of exercising the option. It would not be in order for Government to write to the Assistant Judge direct as proposed.

Sd/- P.M. Lad

O.C.

Additional Secretary to Government.

U.R. to P. & S.D. No 3555 dated the 27th February 1951.

Mjr/22/6

4 Cs.

Electric Convulsive Treatment Insulin Thereapy and Brain operation - Whether amendment of Lunacy Act necessary.

It is found that the Electric Convulsive Treatment to patients in Mental Hospitals is to a certain extent effective but involves risk to life. It is, therefore, proposed that Government should instruct specifically, the Magistrates issuing Reception Orders in respect of destitutes, potentially destitutes and criminal (in consultation with their legal guardians) insanes to grant permission to the Hospital Authorities to undertake any treatment involving risk to life (E.C.T., Insulin Thereapy and Brain operation) but which is likely to improve the patients' mental condition. In the case of voluntary boarders who are destitutes, their own permission is considered sufficient. L.S.G. & P.H. Deptt. consulted H.D. regarding its proposals to empower Magistrates in this behalf by an executive order. H.D. suggested that this Department may be consulted whether it would be necessary to amend the Indian Lunacy Act for the purpose.

2. Section 88 of the Indian Penal Code is as follows:-

> "Nothing, which is not intended to cause death, is an offence by reason of any harm, which itmay cause, or be intended by the doer to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm."

It will however be seen that under this section to give protection to the doctor, the consent of the person for whose benefit the treatment is to be undertaken is necessary. A linatic annot give a valid consent; for a valid consent cannot be given by a person who, from nsoundness of mind, is unable to understand the nature and consequences of that to which he gives his consent (see section 90 of the Indian Penal Code). However, if the lunatic has lucid intervals during which he is free from mental infirmity, consent to undergo the treatment given by him during such lucid intervals would be quite valid. There is, however, in section 89 of the Indian Penal Code a specific provision that act done in good faith for the benefit of an insane person with the consent, express or implied. either of his guarding or of other person having lawful charg

of him shall not be an offence. The second proviso to that section makes it clear that this protection exten even to acts which the person committing knows to be likely to cause death <u>provided they are for the curing of any grievous disease or any infirmaty</u>. Insanity can be regarded as a grievous infirmity. It is therefore clear that mental hospitals can undertake the electric convulsive treatment which involves risk to life either with the consent of the lunatic given during his lucid intervals or with the consent of the Superintendent of the Mental Hospital to whose lawful charge the lunatic has been consigned by the Reception Order.

Sd/- J.R.Dhurandhar

9/8

A.C.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 12756, dated the 8th August 1951

Mjr/22/6

4 Cs.

It appears that in pursuance of the provisions

P. 1/ ante

of sections 5 and 6 of the Indian Lunacy Act, 1912, and para 7 to 9 of the Instructions contained in section IX of the Mental Hospital Manual, Shri S.M. Gunavante presented an application to the S.D.M., South Salsette, Bandra, on 10-8-45, for an order of reception of his wife's brother, Shri P.N. Nagarkar, and as required by section 11(b) of that

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Act, gave an undertaking in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in the Hospital at the rate of six annas per day together with the necessary increase in the rate as prescribed by Govt. Shri Gunavante paid Rs. 73-8-0 and thereafter ceased to make any payment towards the cost of maintenance of the lunatic. As a sum of Rs. 874-4-0 is found due from Shri Ganavante on account of arrear of maintenance charges, a suit (No. 15318/50) has been instituted against him in the Court of Small Causes, Bombay, for recovering the said amount. As ascertained from 'E' Branch this suit is no fixed for hearing on 6-9-1951 .

P. 15 ante.

2. In his letter dated 16-3-51 addressed to the C.S., Shri Gunavante states that he paid the maintenance charges for 10 months upto 30-4-46, and that as he could not bear this financial burden, he intimated the Hospital authorities that he was unable to continue to make any further payments. He further states that when a notice was served on him by the Presidency Magistrate, Bandra, on 13-5-47 calling upon him to pay the arrears due from him he brought to his notice the following circumstances and prayed for exemption from payment of the maintenance charges of the lunatic-

(i) that neither the patient nor his widow & mother has any property from which the

P.T.O.

charges could be defrayed, nor is there any body legally bound to support him;

(ii) that his own income as a stenographer is hardly sufficient to meet the expenses of his family;

(iii) that he is not legally bound to pay the maintenance charges of his brother in-law.

3. He states that no order has, however, been passed by the Magistrate on the representation made by him for exempting him from payment of the charges under rule 18(v) of the Rules made under section 99 of the Act. Under the circumstances he requests Govt. to withdraw the suit instituted against him for recovery of the maintenance charges due from him .

The Dy. Secretary, L.S.G. and P.H.Deptt. states that it is open to the applicant to adopt the course suggested by the Supdt., Central Mental Hospital, Yeravda, and, therefore, it is not necessary for Govt. to inter fere. He also states that there is no case for exempting him from payment of arrears. He has forwarded the papers to R.L.A. "for favour of remarks."

Mjr/22/6

4 Cs.

Legal Department.

Seen and returned.

It is for the applicant to move the Presidency Magistrate, Bandra, under rule 18(v) for the reduction or remission of the maintenance charges.

Sd/- P.M.Lad

Additional Secretary to Government.

U.R. t o L.S.G. & P.H.D., No. 13701, dated the 27th August, 1951.

Mjr/22/6

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